

[illegible]

APPEARANCES :

For the Defendant: Nunley & Associates, PLLC  
BY: ROBERT E. NUNLEY, ESQ.  
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Audio Operator: COURT PERSONNEL

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: This is the time for the initial appearances in the cases of the United States of America versus Alvury Francis and \*\*\*.

Who's Mr. Francis?

Mr. Francis -- Mr. Nunley, I understand you represent him?

MR. NUNLEY: Yes, sir.

THE COURT: Come on up and join him.

(Mr. Nunley complies)

THE COURT: You all set for Christmas?

MR. NUNLEY: Excuse me, sir?

THE COURT: Are you all set for Christmas?

MR. NUNLEY: I'll have to work on that.

\* \* \*

THE COURT: Mr. Francis, you've been charged by a Grand Jury in this District as follows: That on or about February 6, 2001, in the Eastern District of North Carolina, you did knowingly and intentionally possess with the intent to distribute more than 50 grams of crack cocaine, in violation of Title 21, United States Code, § 841(a)(1).

Count 2 charges that on that same day, in this District, you knowingly and intentionally possessed with the intent to distribute more than 500 grams of cocaine

1 hydrochloride, in violation of Title 21, United States Code,  
2 § 841(a)(1).

3           The United States, in Count 3, seeks the forfeiture of  
4 approximately \$49,549 of United States currency and the right  
5 to substitute any assets you may have if you do not, in fact,  
6 still have that money.

7           Would you inform the defendant of the maximum  
8 punishment he faces as well as the Government's position  
9 regarding his liberty status?

10           MR. ONTJES: Yes, Your Honor.

11           Your Honor, the penalties are the same as to both  
12 Counts 1 and 2. The defendant faces not less than 5 years, nor  
13 more than 40 years imprisonment, up to a \$5 million fine and/or  
14 both, and up to five years supervised release and a \$100  
15 special assessment per count.

16           The Government will be seeking detention in this  
17 matter.

18           THE COURT: Thank you.

19           Mr. Francis, the Government has asked that you be held  
20 in custody from now until the time of your trial. Whether you  
21 should be held in custody or not would normally be a decision  
22 made by a Judge at a detention hearing that would be held on  
23 Tuesday, December 29th. However, I've been handed a document  
24 entitled Waiver of Detention Hearing signed by Mr. Nunley here  
25 in court and above his signature there is another signature.

1 Did you sign that document?

2 MR. NUNLEY: Stand up.

3 THE DEFENDANT: Yes, I did.

4 THE COURT: And is that what you want to do, waive or  
5 give up your right to a hearing?

6 THE DEFENDANT: Yes.

7 THE COURT: Thank you. You may have a seat.

8 Based on the foregoing, I find there's probable cause  
9 to believe -- I'm sorry -- I find that the, that the Waiver is  
10 knowingly and voluntarily made, accept on behalf of the court,  
11 and direct the clerk to file it.

12 Now under the Constitution and the laws of the United  
13 States, you have the following rights:

14 You have the right to remain silent. This means that  
15 no one can require you to answer any questions or make any  
16 statements about the charges you face. This is a right you can  
17 waive or give up.

18 So after knowing of your right to silence, if you  
19 decide to answer any questions or make any statements, whatever  
20 you say can be used against you.

21 On a later date you'll be called on to enter a plea to  
22 the charges contained in the indictment. That plea can either  
23 be guilty or not guilty.

24 If you decide to plead guilty, there'll be no trial  
25 because you'll be admitting that you committed the crimes

1 charged in the indictment. However, if you decide to plead not  
2 guilty, there will be a trial.

3           At a trial you'll be presumed innocent. There'll be  
4 no burden on the Government to prove you guilty. The burden --  
5 there'll be no burden on you to prove your innocence. The  
6 burden will be on the Government to prove you guilty beyond a  
7 reasonable doubt. To do that, the Government must bring in  
8 witnesses to testify in open court. They'll be put under oath  
9 and testify from the witness stand. After the Government  
10 finishes asking these witnesses questions, your attorney would  
11 be allowed to question them. This is called cross-examination.  
12 These rights stem from your right under the Constitution to  
13 confront the witnesses against you.

14           At trial, you have the right to present evidence on  
15 your own behalf. This includes the right for you to testify,  
16 but only if you wish to do so. You cannot be required to  
17 testify. That is because of the right to silence I informed  
18 you of earlier. If you elect not to testify at trial, the  
19 Judge may not from that fact assume you are guilty and will  
20 tell the jury that they may not assume your guilt from your  
21 silence.

22           You have the right to use a subpoena to make witnesses  
23 favorable to you come to court and testify on your behalf.

24           You have the right to a jury trial.

25           You were previously informed of your right to counsel

1 and you have --

2 You're retained, are you not, Mr. Nunley?

3 MR. NUNLEY: I am, Your Honor.

4 THE COURT: -- you've retained Mr. Nunley.

5 Sir, would you stand, please?

6 (Mr. Francis complies)

7 THE COURT: Have you heard everything I've said today?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Do you feel you've understood everything  
10 I've said?

11 THE COURT: I do.

12 THE COURT: Do you have any questions?

13 THE DEFENDANT: Not at this time.

14 THE COURT: Thank you. You may have a seat.

15 Mr. Marshal, he'll be in your custody.

16 MR. NUNLEY: Your Honor, one matter before we move on.

17 His name on the indictment is spelled A-L-V-U-R-Y.

18 THE COURT: Uh-huh. (Indicating an affirmative  
19 response)

20 MR. NUNLEY: When I filed the notice last night, I  
21 noted that the correct spelling is A-L-B-U-R-Y and the A-L-V is  
22 an a/k/a. I just wanted to alert the Court to the reason.

23 THE COURT: I appreciate that. You can either talk to  
24 the U. S. Attorney and they can change it or not.

25 MR. NUNLEY: Very well, Your Honor.

1 THE COURT: Thank you.

2 MR. ONTJES: Thank you, Your Honor.

3 (Proceedings concluded at 10:11 a.m.)

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CERTIFICATE

10 I, court approved transcriber, certify that the  
11 foregoing is a correct transcript from the official electronic  
12 sound recording of the proceedings in the above-entitled  
13 matter.

14 /s/ Janice Russell

March 5, 2013

15 Janice Russell, Transcriber

Date

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